



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 8, 1996

Mr. Scott A. Durfee
General Counsel
Office of the District Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR96-0023

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102777.

The Harris County District Attorney's Office (the "district attorney") received a request for "all files, records and any other documents . . . pertaining to the arrest, investigation and trial of David Mizell; Cause No. 426723; 426722; 426724; and 426573." You have submitted to this office a representative sample of the information requested, which you assert is responsive to the request. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.108 of the Government Code.¹ We have considered the applicable exceptions you claim and reviewed the submitted information.

We first address your assertion that section 552.108 of the Government Code excepts the submitted information from required public disclosure. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996).

¹We note that, although you raised sections 552.103 and 552.107, as you did not explain how these exceptions applied to the requested information, we do not consider them. *See* Gov't Code § 552.301(b)(1); Open Records Decision No. 363 (1983).

Since the records at issue come within the purview of section 552.108, we conclude that most of the information may be withheld under this exception.

We note, however, that information normally found on the front page of an offense report is generally considered public.² *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). We therefore conclude that, except for front page offense report information, section 552.108 excepts the requested records from required public disclosure.

We next address your assertion that section 552.101 of the Government Code excepts some information from required public disclosure. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses both common-law and constitutional privacy.³ Specifically, you assert that "the district attorney requests that the documents setting out the details of sexual offenses, such as written and recorded statements of victims and perpetrators, records of medical examinations, and police investigative reports recounting the details of offenses, be found unavailable in deference to the constitutional privacy rights of the victims of sexual offenses."

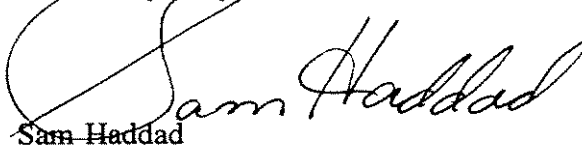
For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683; see Open Records Decision Nos. 339 (1982), 205 (1978) (common-law privacy permits withholding name of victim of sexual offense). Consequently, to the extent the front page offense report information includes information subject to common-law privacy, the district attorney's office must withhold the information

²The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

³We note that constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The scope of information protected under constitutional privacy is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d. 490 (5th Cir. 1985)).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records.⁴ If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large initial "S" that loops around the first part of the name.

~~Sam Haddad~~
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 102777

Enclosures: Submitted documents

cc: Mr. Will Outlaw
Will Outlaw and Associates
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(w/o enclosures)

⁴In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.